In the High court of Uttaranchal, at Nainital.

Chapter VIII, Rule 32 (2) (b)
Description of Case.

Criminal Appeal No. 47 of 2002

Kailash Singh
Vs.
State

Date of Decision: 24th March, 2005

For the approval of:

Hon'ble Mr. Justice Irshad Hussain, J.

Hon'ble Mr. Justice Rajesh Tandon, J.

- Whether the order/judgment should be Sent for reporters for reporting? (Yes)

- Whether the reporters be allowed to See the judgment? (Yes)

ISB

In the High Court of Uttaranchal at Nainital.

Criminal Appeal No. 47 of 2002

Kailash Singh S/o Gopal Singh,

R/o Village Songaon, Patti Patharkhani,

District Pithoragarh ….. Appellant.

Versus

State of Uttaranchal ….Respondent.

Sri Lokendra Dobhal, learned counsel for the appellant.
Sri A. Rab, learned Additional Government Advocate.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble Rajesh Tandon, J.

Date: 24th March, 2005.

Per: Hon'ble Mr. Justice Irshad Hussain)

The appellant calls in question the legality of the judgment rendered on 1-2-2002 by the learned Sessions Judge, Pithoragarh in Sessions Trial No. 10 of 2001, whereby the appellant was convicted and sentenced to undergo Rigorous Imprisonment for live under Section 302 I.P.C.

2. The appellant is the cousin brother of informant Ganesh Singh (P.W.2). Deceased Smt. Govindi Devi, the victim of the case, was the wife of the informant. They have got their houses adjacent to each other in village Songaon, Patti Patharkhani Teshil and District Pithoragarh. The house of witness Ramesh Singh is also adjacent to their house.

3- The prosecution case, as disclosed from the F.I.R. and the evidence, is that on 3-12-2000 at about 9:30 A.M. deceased Govindi Devi reprimanded Smt. Bhagirathi Devi, the wife of the appellant for cutting grass from her field. The appellant got displeased on it and went inside his house and came back with an iron pipe of 1 ½ hand length and retorted that he will not now spare the life of Govindi Devi. Hearing this Govindi Devi raised alarm and started running from there towards the temple of 'Prichas Devta'. She was chased by the appellant. Seeing this informant Ganesh Singh and Smt. Bhagirathi Devi, the wife of the appellant also followed them. The

appellant chased Smt. Govindi Devi upto the temple and on reaching there caught hold of Smt. Govindi Devi and gave iron rod blows on her head. Smt. Govindi Devi sustained head injuries and succumbed to these injuries at the spot of the incident itself. The appellant thereafter seeing the Informant and others fled away from there with iron rod. Smt. Leela Devi (P.W.3), daughter-in-law of the Informant also reached the place of the incident, after following with informant besides another witness Ramesh Singh, the another relative of the informant.

4- After the occurrence, informant prepared the written report, Ext. Ka.2 and sent it for Circle Patwari, who was not then available at his headquarter and the written report was delivered to Naib Tehsildar, Tehsil Pithoragarh. The report was then sent to be Circle Patwari by the Naib Tehsildar, who received it on 4.12.2000 at 7 A.M. and left for the scene of the incident. The Circle Patwari Umed Ram Tamta (P.W.7) held inquest on the dead body and prepared inquest report, Ext. Ka.5 and other relevant documents and then sent the packed and sealed packet of the dead body for post mortem with relevant documents. On completion of the investigation he submitted charge sheet, Ext. Ka. 13 against the appellant on 28-1-2001.

5- The appellant denied the charge leveled against him by the learned Sessions Judge and contended that he has been falsely implicated in the case due to enmity. Thereupon the prosecution examined seven witnesses to bring home guilt to the appellant. P.W.1, Dr. M.M.S. Tolia, performed post mortem on the dead body of Smt. Govindi Devi at 12.00 on 5.12.2000 and prepared the post mortem report, Ext. Ka.1. Following anti-mortem injuries were detected:

1- One bony deep lacerated wound on scalp above the left side forehead with clotted blood, size 6 x 1 cm.

2- One bony deep lacerated wound on right parietal region of scalp with clotted blood, size 8.5 x 2cm.

3- One bony deep lacerated wound of left parietal region of scalp with clotted blood, size 5 x 1cm.

4- One triangular lacerated wound on left side cheek just below the left eye with clotted blood, size 3x 2cm.

5- Haematoma on left eye, size 4 x 4 cm.

On internal examination left parietal to right parietal bone of the skull was found fractured. Pleura was found lacerated on left side. 8th to 12th ribs of the left side were also found fractured. Lungs were lacerated and both chambers of the heart were empty. There was blood in the peritoneum cavity which was also lacerated. Undigested rice and fluid was present in the stomach and there was some digested food in the small intestine and whereas digested food in the large intestine. In the opinion of the Medical Officer death occurred about three days ago due to shock and haemorrhage as a result of ante-mortem injuries. In cross-examination he gave out that the deceased probably had taken her meal about an hour or half before the death.

6- P.W.2, informant Ganesh Singh is the eye witness of the occurrence and he supported the prosecution version as narrated above. Written F.I.R., Ext. Ka.2 was prepared by him and was sent for registration of same. He denied to the suggestion that his wife Smt. Govindi Devi had gone to cut fodder from the jungle and she fell from the tree, got injured and succumbed to her injuries at the spot. He also denied to the suggestion that the appellant has not fatally assaulted his wife and that he had not seen the occurrence.

7- P.W.3 Smt. Leela Devi the daughter-in-law of the informant gave evidence of the nature of registration in the sense that she had seen her mother-in-law Smt. Govindi Devi lying dead with injuries at the temple of 'Pichas Devta' and at that time appellant Kailash Singh was coming down from the temple while carrying an iron pipe in the hand. This witness had also followed the victim, the appellant and her father-in-law when the appellant was chasing the victim towards the temple near about the time of the occurrence She also corroborated the prosecution version that the appellant got enraged when the deceased reprimanded the appellant's wife for cutting the grass from the deceased's filed and on that issue appellant picked up iron rod from inside the house and went after the deceased right up to the temple. In cross-examination she gave out that she had not seen any other persons at the temple except her father-in-law.

8- P.W.4, Puran Nand Gave evidence that on the day of the occurrence he saw the dead body of the deceased at the temple and

thereafter he accompanied Hoshiyar Singh to deliver the written report to the Patwari which was sent by the informant.

9- P.W.5, Ramesh Singh is also a relation of the informant and he gave evidence to the effect that while on the day of the occurrence he was returning from the jungle he saw deceased Smt. Govindi Devi going towards the temple of 'Prichas Devta' and she was being followed by the appellant, then carrying and iron rod in the hand. He had tried to stop the appellant but could not succeed and thereafter he went to his house. Later on he was the dead body of the deceased lying there at the temple.

10- P.W.6, Naresh Singh is mainly the witness of the seizure of Mat. Ext. 1 vide memo, Ext. Ka.3 prepared by the Investigating Officer. P.W.7, Umed Ram Tamta, the Circle Patwari proved the steps taken towards the investigation of the case including the memo of attachment of blood-stained and plain earth from the scene of the occurrence as well as the iron pipe from near the scene of incident, Ext. Ka.3, check F.I.R., Ext. Ka.4 and documents of the inquest. He had submitted charge sheet after the investigation of the case.

11- No evidence was adduced in the defence.

12- The learned Sessions Judge appraised the evidence of the prosecution and placed reliance on the evidence of eye witness informant Ganesh Singh (P.W.2) and found that the evidence is wholly reliable to prove the time, place of the occurrence as well as the manner in which his wife Smt. Govindi Devi was fatally assaulted by his cousin brother, the appellant Kailash Singh. The learned Sessions Judge also found the evidence of Smt. Leela Devi (P.W.3) reliable as it amply supported the evidence of the informant eye witness by virtue of the nature of the evidence that the appellant followed her mother-in-law the deceased right up to the temple and when she also reached there following them, she saw that her mother-in-law the deceased was found lying dead with injuries and appellant Kailash Singh was coming down the temple with iron pipe, which in fact, the appellant had picked up from his house when he started following the victim who wanted to save herself from the clutches of the appellant. Similarly the evidence of Ramesh Singh (PW.5) was found relevant so far as the factum of the deceased being followed by

the appellant with an iron rod near about the time of the occurrence on that day and that later on the witness found the deceased lying dead with injuries at the temple of ‘Pichas Devta’. The learned Sessions Judge was also convinced that the death of the deceased was homicidal and therefore the evidence against the appellant was found trust-worthy and reliable to prove his guilt and the appellant was thus convicted and sentenced as aforesaid.

13- In support of his case, learned counsel for the appellant submitted that the F.I.R. of the case was anti-timed, as it appear that it was prepared when the steps for investigation of the case have already been taken; that neither Ganesh Singh nor his daughter-in-law Leela Devi were nominated as the eye witnesses of the occurrence and that in the totality of the circumstances of the case there being no reliable and direct evidence in the case the learned trial court fell in error in placing implicit reliance on the evidence of the informant and also incorrectly sought corroboration from the evidence of Leela Devi as well as Ramesh Singh and therefore the conviction and sentence awarded to the appellant can not legally be maintained.

14- In response the learned Additional Government Advocate argued that there was no occasion to falsely implicate the appellant and that there was nothing to indicate that the informant Ganesh Singh had not witnessed the occurrence. He also submitted that the testimony of the informant stand supported by the evidence of the nature of register as disclosed by the learned Sessions Judge and that the death being homicidal the learned Sessions Judge has rightly placed reliance on the prosecution evidence to convict the appellant and sentencing him for life imprisonment for committing the murder of the deceased Smt. Govindi Devi.

15- We have given careful consideration to the submissions of the learned counsel for the appellant and learned Addl. G.A. and have analyzed the evidence in the case and have also gone through the judgment under appeal with the assistance of both the counsel. We are of the considered view that there is no merit in any of the submission made on behalf of the appellant. The written F.I.R., Ext. Ka.2 prepared by the informant Ganesh Singh (P.W.2) is brief. It however serves the purpose for which an F.I.R. is actually meant to set the

criminal law in motion. It reveals the time, place of the occurrence, the manner in which deceased Govindi Devi was assaulted by appellant Kailash Singh, the weapon of assault, an iron rod and also the names of the persons who saw the incident or happened to be there at the scene of the incident. The leared counsel for the appellant has argued that the informant has not shown himself to be the eye witness of the incident but he came out to give evidence in the case as if he himself had seen the incident. We see no force in this argument because the manner in which the F.I.R. had been prepared, admit of the inference that the informant himself had witnessed the occurrence. In the brief version the informant was not supposed the mention that he has also seen the incident when the informant himself was preparing the F.I.R. in the manner that he was present at the scene of the incident and witnessed the occurrence.

16- No doubt the name of Leela Devi (P.W.3) is not mentioned as eye witness of the occurrence, but it is of significance that in the F.I.R. the informant did not prefer to give names of all the witnesses but mentioned the names of Ramesh Singh and Smt. Bhagirathi Devi and thereafter mentioned other neighbors who had witnesses the incident. In fact there is no requirement of law to mention the names of all the witnesses in the F.I.R. In the matte of Bhagwan Singh and others versus State of M.P.; 2002 A.I.R. S.C.W. 1532 the Hon'ble Judges of the Apex Court reiterated that there is no requirement of law for mentioning the names of all the witnesses in the F.I.R., the object of which is only to set the criminal law in motion. Therefore, the veracity of the F.I.R., the very substratum of the story, can not be said to be vitiated for non mentioning the name of Smt. Leela Devi or any other witness.

17- In the inquest report, Ext. Ka.5 the crime number as well as the name of the informant etc have not been mentioned at the top of the first leaf and on the basis of this omission learned counsel for the appellant has argued that the F.I.R. was ante-timed to facilitate the alleged eye witness, the informant of the case and that this aspect of the matter also throw doubt in the veracity of the prosecution version and claim made by the informant Ganesh Singh. We see on merit in this argument also because non-mentioning of the number of the case

or name of the complainant in the inquest report would not indicate that the F.I.R. was anti-timed. In the matter of Rajesh alias Raju Chandu Lal Gandhi and another versus State of Gujarat; 2002 A.I.R. S.C.W. 1258, the Apex Court observed that non-mentioning of F.I.R., number of case or name of the complainant (informant) in the inquest report (panchayatnama) can not be a ground to infer that F.I.R. was ante-timed. Therefore, on account of non-mentioning of the F.I.R. etc in the inquest report also do not assail the veracity of the F.I.R. and the prosecution version.

18- Learned counsel for the appellant also tried to raise suspicion about the time of the occurrence by referring to the statement of Medical Officer Dr. M.M.S. Tolia (P.W.1) who gave out in the cross-examination that the deceased had perhaps taken her meal about an hour or half before the death. According to Smt. Leela Devi (P.W.3), the family members including the deceased Govindi Devi had taken their morning meal at about 6-7 A.M. on the day of the occurrence. In the stomach undigested rice and fluid was found present. Referring to this aspect and the evidence of Medical Officer and the said witness, the learned counsel canvassed the argument that the death of the victim could not have taken place at about 10.00 A.M. on 3.12.2000, the day of the occurrence, but few hours earlier when the only eye witness Ganesh Singh (P.W.2) had been away to Badda bazaar from where he admitted to have returned to his house at about 9.30 A.M. on that day. Therefore, according to the learned counsel the time of the occurrence had been changed to suit to prosecution claim that informant Ganesh Singh was present in his house when his wife reprimanded the wife of the appellant on the issue of cutting of grass from the filed and as a result of which appellant got enraged and went on to fatally assault the deceased. In our view the submission of the learned counsel carry no conviction because presence of undigested rice and fluid can not be taken to conclusively dispute the time of the occurrence as alleged by the prosecution and corroborated by the evidence of the informant and others. It is also of significance that semi-digested food was found present in the small intestine and whereas there was digested food in the large intestine, which support the evidence of Smt. Leela Devi that the deceased had taken her meal

at about 6-7 A.M. in the morning. If the deceased had consumed some rice or other material later on resulting which undigested rice and fluid was found present in the stomach it would not indicate that the time of the occurrence had been suitably changed. Moreover it is well settled that medical evidence is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerized or mathematical fashion so as to be so correct as to the last second)Ref: A.I.R. 1985 S.C. 1815, P. Venkaiah Vs. State of A.P.). In another decision in the matter of Puran Singh vs. State of Punjab, 1995 S.C.C. (Cri.) 1143 the Apex Court observed that it is also settled that the state of the contents or the stomach found at the time of the medical examination is not a safe guide for determining the time of the occurrence because that would be a matter of speculation in the absence of reliable evidence on the question as to when the deceased had his last meal and what that meal consisted of. These principles apply to the facts of this case also and in the totality of the circumstances of the case and the evidence on record we feel it safe to contend that the time of the occurrence had not been changed by the prosecution.

19- The evidence of the informant Ganesh Singh was seriously criticized and adversely commented upon by the learned counsel for the appellant, firstly on the ground that he being as relation witness gave tainted evidence against the appellant and further that his sole testimony is not sufficient to prove the manner of the occurrence and that the appellant is the author of the fatal injuries sustained by the deceased Govindi Devi. It is well settled that the conviction can be based on the sole evidence of witness related to the deceased provided on scrutiny the evidence of the witness is found trustworthy and reliable. In this case we have found that informant Ganesh Singh has given truthful version of the incident and there is nothing of significance in his cross-examination as may in any way indicate that he was not present at the scene of the incident. No doubt the witness had gone to Badda bazaar to bring house-hold articles on the day of the occurrence but his evidence that he returned to the house by 9.30 A.M. on that day is convincing and reliable and it can not be safely accepted that he remained out side his house even at the time of the

incident. Ganesh Singh has stated in cross-examination that he went towards the temple behind the appellant after about 5 to 10 minutes as he had seen his wife running towards that side and being chased by the appellant. Pointing out to this statement, learned counsel submitted that since the witness had not left his house immediately after the appellant was seen chasing the deceased, there was no occasion for him to reach in time at the temple to see the actual assault being made by appellant. We are not convinced with this argument also because according to the witness the appellant went behind the deceased and then caught hold of her and thereafter started giving blows of iron rod carried b the appellant. It was not the case that immediately reaching there at the temple the appellant had started giving iron rod blows on the person of the deceased and there being some time gap the witness has had the opportunity to reach there in time to see that the appellant was giving iron rod blows on the person of the deceased. There can be no gain saying that the witness stood the test of piercing cross-examination and there is nothing of importance as may tell upon his credibility. We therefore find ourselves in agreement with the view of the learned Sessions Judge that Ganesh Singh is a wholly reliable witness and found that his sole testimony is sufficient to prove that none other than the appellant is the author of the fatal injuries of the deceased Smt. Govindi Devi which she was made to receive at about 10.00 A.M. on 3.12.2000.

20- Coming to the evidence of Smt. Leela Devi (P.W.3) it can not be lost sight of the fact that she is also the most natural witness of the occurrence. The incident was the result of the protest made by the deceased when it was reported that appellant's wife had cut away the grass from the field of the deceased. As stated earlier the house of the deceased and the appellant were adjacent and when the protest was made, this witness being the daughter-in-law of the deceased was expected to be there in the house and was also the most natural person to have followed the appellant while chasing the deceased right up to the temple, the actual place of the incident. She being a lady fell a little behind in reaching the temple and this was the reason that when she reached there at the temple she found her mother-in-law lying dead with injuries and the appellant was coming downwards from the

temple while carrying iron pipe in the hand. The evidence of the witness thus is very natural as she did not make a false attempt to claim that she had also seen the actual assault made on her mother-in law. We found that in her cross-examination there is nothing of substance as may assail her trustworthiness. Her evidence of res gestae nature, therefore, support the evidence of informant Ganesh Singh that the author of the fatal injuries of the deceased was the appellant. Learned Sessions Judge was thus fully justified in placing reliance on her evidence also.

21- The evidence of Ramesh Singh (P.W.5) can also be said to be of the same nature as he had seen the appellant following deceased Govindi Devi towards the temple of 'Pichas Devta' and at that time the appellant was carrying an iron rod at about 10.00 in the morning of the day of the occurrence. Later on the witness found the deceased Smt. Govindi Devi lying dead there with injuries. The circumstance made out from the evidence of the witness also connect the appellant with the crime which fact otherwise stand established by the direct evidence of the eye witness Ganesh Singh and further supported by the evidence of Smt. Leela Devi as referred above. Other evidence in the case is not of much consequence so far as the actual occurrence is concerned and the evidence of the other witnesses was therefore not commented upon a the time of the arguments. So is the case with the investigation of the crime which ahs not been shown to be defective.

22- For the reasons aforesaid and the material on record we are of the view that the prosecution has been able to establish that the appellant fatally assaulted Smt. Govindi Devi at about 10.00 A.M. on 3.12.2000 at the temple of 'Pichas Devta' in village Songaon, Patti Patharkhani, Tehsil Pithoragarh.

23- Lastly learned counsel for the appellant submitted that at any rate it was not a case of murder but culpable homicide not amounting to murder in view of the fact that on account of sudden provocation the appellant at the most wanted to give a lesson to the deceased by giving blows of the iron rod on which he could lay his hands at the time of the protest made by the deceased for cutting of grass from his field. The learned counsel urged that the appellant should have been held guilty of the offence punishable under Section 304 I.P.C.

because the appellant had no intention of causing bodily injury knowing it likely to cause the death of the deceased while giving the blows on the person of the deceased by iron rod. We see on force in this argument because the appellant gave heavy iron rod blows on the head of the deceased causing there bony deep lacerated wounds resulting which skull bones were fractured and it is indicative of the fact that the blows were given with the intention of causing bodily injury with the knowledge that in all probability such bodily injury is likely to cause the death of the victim. The case of the appellant squarely fall under clause-fourthly of Section 300 of the Indian Penal Code and therefore we are in agreement with the view taken by the learned Sessions Judge that the charge of murder under Section 302 I.P.C. stand established against the appellant. He had been awarded minimum sentence of Rigorous Imprisonment for life and there being no merit in the appeal the same is liable to be dismissed.

24- The appeal is dismissed. The judgment dated 1.2.2002 passed by the learned Sessions Judge, Pithoragarh in Sessions Trial No. 10/2001 is affirmed. The appellant is in jail. He shall serve out the sentence awarded against him.

25- Let the record be sent back to the court concerned for compliance to be reported to the Court within a month.

(Rajesh Tandon, J.) **(Irshad Hussain, J.)**

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